

POOR LEGIBILITY

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April 11, 2002

SUBJECT: Pemaco Superfund Site Consent Decree with Lawrence Sze

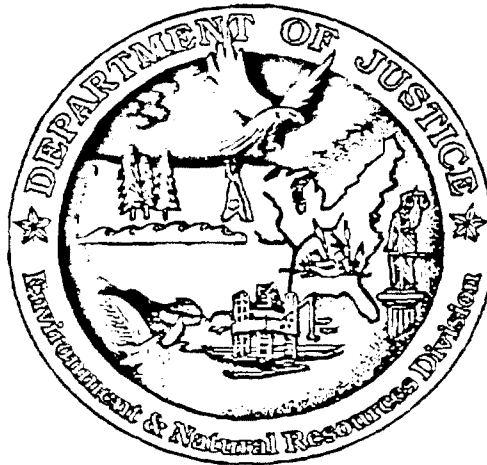
TO: Rosemarie Caraway (SFD-7-2)
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David Wood (PMD-6)
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FROM: Letitia Moore (ORC-3)



Please find attached the Consent Decree signed with Lawrence Sze that was entered in the U.S. v. Pemaco, Inc., and Lawrence Sze matter. The Consent Decree was entered on March 12, 2002, however, none of the parties were notified.

The Defendant has now been notified and, by arrangement with DOJ, **payment is due on Tuesday, April 16, 2002.**



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SENT BY: Sharon / for Angela O'Connell

DATE: 4/2/02

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NUMBER OF PAGES SENT (INCLUDING COVER PAGE): 17

SPECIAL INSTRUCTIONS/OR COMMENTS:

..

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25 IN THE UNITED STATES DISTRICT COURT
 26 FOR THE CENTRAL DISTRICT OF CALIFORNIA

27 UNITED STATES OF AMERICA,

28 Plaintiff,

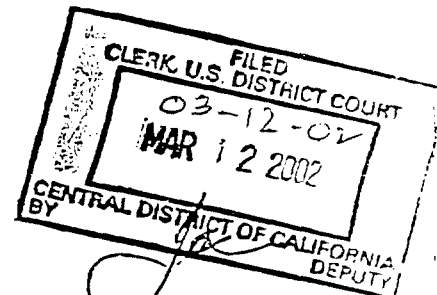
v.

PEMACO, Inc., and LAWRENCE SZE

Defendants.

CIVIL NO. 00-6199-DDDP(CTx)

CONSENT DECREE



Priority
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 JS-2/JS-3
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 JS - 5 / JS - 6
 JS - 2 / JS - 3
 CLSD

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Pemaco Maywood Superfund Site in the City of Maywood, Los Angeles County, California. ("the Site"). The complaint also sought relief under the Federal Debt Collection Procedures Act ("FDCPA")

B. The defendant that has entered into this Consent Decree, Lawrence Sze ("Settling Defendant"), does not admit liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint, but, nonetheless, seeks to resolve this matter short of trial.

C. The United States has reviewed the Financial Information submitted by Settling Defendant to determine whether Settling Defendant is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that Settling Defendant is able to pay the amounts specified in Section VI.

D. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 42 U.S.C. §§ 9606, 9607 and 9613(b), and 28 U.S.C. § 3301 and also has personal jurisdiction over Settling Defendant. Settling Defendant consents to and shall

1 not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this
2 Consent Decree.

3 III. PARTIES BOUND

4 2. This Consent Decree is binding upon the United States and upon Settling Defendant
5 and his heirs, successors and assigns. Any change in ownership or corporate or other legal
6 status, including, but not limited to, any transfer of assets or real or personal property, shall in
7 no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

8 IV. DEFINITIONS

9 3. Unless otherwise expressly provided herein, terms used in this Consent Decree
10 which are defined in CERCLA or in regulations promulgated under CERCLA shall have the
11 meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are
12 used in this Consent Decree or in any appendix attached hereto, the following definitions shall
13 apply:

14 a. "CERCLA" shall mean the Comprehensive Environmental Response,
15 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

16 b. "Consent Decree" shall mean this Consent Decree and all appendices
17 attached hereto. In the event of conflict between this Consent Decree and any appendix, this
18 Consent Decree shall control.

19 c. "Day" shall mean a calendar day. In computing any period of time under
20 this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday,
21 the period shall run until the close of business of the next working day.

22 d. "DOJ" shall mean the United States Department of Justice and any
23 successor departments, agencies or instrumentalities of the United States.

24 e. "EPA" shall mean the United States Environmental Protection Agency and
25 any successor departments, agencies or instrumentalities of the United States.

26 f. "EPA Hazardous Substance Superfund" shall mean the Hazardous
27 Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

28 g. "Financial Information" shall mean those financial documents provided to the

1 United States by Mr. Sze in connection with this case.

2 h. "Interest" shall mean interest at the rate specified for interest on investments
3 of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded
4 annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable
5 rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is
6 subject to change on October 1 of each year.

7 i. "Paragraph" shall mean a portion of this Consent Decree identified by an
8 Arabic numeral or an upper or lower case letter.

9 j. "Parties" shall mean the United States and the Settling Defendant.

10 k. "Plaintiff" shall mean the United States.

11 l. "Section" shall mean a portion of this Consent Decree identified by a Roman
12 numeral.

13 m. "Settling Defendant" shall mean Lawrence Sze.

14 n. "Site" shall mean the Pemaco Maywood Superfund Site, consisting of
15 approximately 4 acres, adjacent to the Los Angeles River in the City of Maywood, Los
16 Angeles, California.

17 o. "United States" shall mean the United States of America, including its
18 departments, agencies and instrumentalities.

19 **V. STATEMENT OF PURPOSE**

20 4. By entering into this Consent Decree, the mutual objective of the Parties is for
21 Settling Defendant to make a cash payment to address its liability for the Site as provided in the
22 Covenant Not to Sue by Plaintiff in Section VIII, and subject to the Reservations of Rights by
23 United States in Section IX.

24 **VI. PAYMENT OF RESPONSE COSTS**

25 5. Within 30 days of entry of this Consent Decree, Settling Defendant shall pay to the
26 EPA \$50,000.

27 6. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S.
28 Department of Justice account in accordance with current EFT procedures, referencing USAO

1 File Number _____, the EPA Region and Site Spill ID Number 099K, and DOJ Case
2 Number 90-11-3-06958. Payment shall be made in accordance with instructions provided to
3 Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the Central
4 District of California following lodging of the Consent Decree. Any payment received by the
5 Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.

6 7. At the time of payment, Settling Defendant shall send notice that payment has been
7 made to EPA and DOJ in accordance with Section XIII (Notices and Submissions).

8 8. The total amount of the payment to be paid pursuant to Paragraph 5 shall be
9 deposited in the Pemaco Maywood Special Account within the EPA Hazardous Substance
10 Superfund to be retained and used to conduct or finance response actions at or in connection
11 with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

12 9. Settling Defendant shall send notice that payment has been made in accordance with
13 Paragraph 7 above, and the payment shall be deposited in accordance with Paragraph 8 above.

14 **VII. FAILURE TO COMPLY WITH CONSENT DECREE**

15 10. Interest on Late Payments. If Settling Defendant fails to make any payment under
16 Paragraph 5 by the required due date, Interest shall accrue on the unpaid balance through the
17 date of payment.

18 11. Stipulated Penalty.

19 a. If any amounts due under Paragraph 5 are not paid by the required date,
20 Settling Defendant shall be in violation of this Consent Decree and shall pay, as a stipulated
21 penalty, in addition to the Interest required by Paragraph 10, \$2,500 per day that such payment
22 is late.

23 b. Stipulated penalties are due and payable within 30 days of the date of the
24 demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall
25 be identified as "stipulated penalties" and shall be made by certified or cashier's check made
26 payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the
27 check, shall reference the name and address of the party making payment, the Site name, the
28

1 EPA Region and Site Spill ID Number 099K, and DOJ Case Number 90-11-3-06958, and
2 shall be sent to:

3 Mellon Bank
4 EPA Superfund Accounting
5 EPA Region IX
6 P.O. Box 360748M
7 Pittsburgh, PA 15251

8 c. At the time of each payment, Settling Defendant shall send notice that
9 payment has been made to EPA and DOJ in accordance with Section XIII.

10 d. Penalties shall accrue as provided in this Paragraph regardless of whether
11 EPA has notified Settling Defendant of the violation or made a demand for payment, but need
12 only be paid upon demand. All penalties shall begin to accrue on the day after payment is due
13 and shall continue to accrue through the date of payment. Nothing herein shall prevent the
14 simultaneous accrual of separate penalties for separate violations of this Consent Decree.

15 12. Payments made under this Section shall be in addition to any other remedies or
16 sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the
17 requirements of this Consent Decree.

18 13. Notwithstanding any other provision of this Section, the United States may, in its
19 unreviewable discretion, waive payment of any portion of the stipulated penalties that have
20 accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse
21 Settling Defendants from payment as required by Section VI or from performance of any other
22 requirements of this Consent Decree.

23 **VIII. COVENANT NOT TO SUE BY PLAINTIFF**

24 14. Except as specifically provided in Section IX (Reservation of Rights by United
25 States), the United States covenants not to sue or to take administrative action against Settling
26 Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and
27 9607(a), and Sections 3304(a) and 3304(b) of FDCPA, 28 U.S.C. §§ 3304(a), (b), with
28 regard to the Site. With respect to present and future liability, this covenant shall take effect
upon receipt by EPA of all amounts required by Section VI (Payment of Response Costs) and
any amount due under Section VII (Failure to Comply with Consent Decree). This covenant

1 e. liability arising from the past, present, or future disposal, release or threat of
2 release of a hazardous substance, pollutant, or contaminant outside of the Site.

3 16. Notwithstanding any other provision of this Consent Decree, EPA reserves, and
4 this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to
5 commence a new action seeking relief other than as provided in this Consent Decree, if the
6 Financial Information provided by Settling Defendant, or the financial certification made by
7 Settling Defendant in Paragraph 26, is false or, in an material respect, inaccurate.

8 **X. COVENANT NOT TO SUE BY SETTLING DEFENDANT**

9 17. Settling Defendant covenants not to sue and agrees not to assert any claims or
10 causes of action against the United States or its contractors or employees, with respect to the
11 Site or this Consent Decree, including but not limited to:

12 a. any direct or indirect claim for reimbursement from the Hazardous
13 Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42
14 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

15 b. any claim arising out of response actions at or in connection with the Site,
16 including any claim under the United States Constitution, the California Constitution, the Tucker
17 Act, 28 U.S.C. § 1491, or the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended,
18 or at common law; or

19 c. any claim against the United States pursuant to Sections 107 and 113 of
20 CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

21 18. Except as provided in Paragraph 17 (Waiver of Claims) and Paragraph 23
22 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the
23 United States brings a cause of action or issues an order pursuant to the reservations set forth in
24 Paragraph 15 (c) - (e), but only to the extent that Settling Defendant's claims arise from the
25 same response action or response costs that the United States is seeking pursuant to the
26 applicable reservation.

27 19. Nothing in this Consent Decree shall be deemed to constitute approval or
28 preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C.

1 § 9611, or 40 C.F.R. 300.700(d).

2 **XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

3 20. Nothing in this Consent Decree shall be construed to create any rights in, or grant
4 any cause of action to, any person not a Party to this Consent Decree. The preceding sentence
5 shall not be construed to waive or nullify any rights that any person not a signatory to this
6 Decree may have under applicable law. The Parties expressly reserve any and all rights
7 (including, but not limited to, any right to contribution), defenses, claims, demands, and causes
8 of action which they may have with respect to any matter, transaction, or occurrence relating in
9 any way to the Site against any person not a Party hereto.

10 21. The Parties agree, and by entering this Consent Decree this Court finds, that
11 Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from
12 contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. §
13 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this
14 Consent Decree are all response actions taken or to be taken and all response costs incurred or
15 to be incurred, at or in connection with the Site, by the United States or any other person. The
16 "matters addressed" in this Consent Decree do not include those response costs or response
17 actions as to which the United States has reserved its rights under this Consent Decree (except
18 for claims for failure to comply with this Decree), in the event that the United States asserts
19 rights against Settling Defendant coming within the scope of such reservations.

20 22. Settling Defendant agrees that, with respect to any suit or claim for contribution
21 brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing
22 no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also agrees
23 that, with respect to any suit or claim for contribution brought against it for matters related to
24 this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the
25 complaint or claim upon it. In addition, Settling Defendant shall notify EPA and DOJ within 10
26 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt
27 of any order from a court setting a case for trial, for matters related to this Consent Decree.

28 23. In any subsequent administrative or judicial proceeding initiated by the United

1 States for injunctive relief, recovery of response costs, or other relief relating to the Site,
2 Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the
3 principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other
4 defenses based upon any contention that the claims raised by the United States in the
5 subsequent proceeding were or should have been brought in the instant case; provided,
6 however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by
7 Plaintiff set forth in Section VIII.

8 XII. RETENTION OF RECORDS

9 24. Until 10 years after the entry of this Consent Decree, Settling Defendant shall
10 preserve and retain all records now in his possession or control, or which come into his
11 possession or control, that relate in any manner to response actions taken at the Site or the
12 liability of any person under CERCLA with respect to the Site, regardless of any corporate or
13 individual retention policy to the contrary.

14 25. After the conclusion of the document retention period in the preceding paragraph,
15 Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any
16 such records, and, upon request by EPA or DOJ. Settling Defendant shall deliver any such
17 records to EPA. Settling Defendant may assert that certain records are privileged under the
18 attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant
19 asserts such a privilege, it shall provide Plaintiff with the following: 1) the title of the record; 2)
20 the date of the record; 3) the name and title of the author of the record; 4) the name and title of
21 each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege
22 asserted. However, no records created or generated pursuant to the requirements of this or
23 any other settlement with the United States shall be withheld on the grounds that they are
24 privileged.

25 26. Settling Defendant hereby certifies that, to the best of its knowledge and belief,
26 after thorough inquiry, he has:

27 a. not altered, mutilated, discarded, destroyed or otherwise disposed of any
28 records, reports, or other information relating to its potential liability regarding the Site since

notification of potential liability by the United States or the State or the filing of suit against it regarding the Site, and that it has fully complied with any and all EPA requests for information regarding the Site and Settling Defendant's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA. 42 U.S.C. § 6927; and

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Defendant executes this Consent Decree.

XIII. NOTICES AND SUBMISSIONS

27. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-06958)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Letitia D. Moore (ORC-3)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

and

Rosemarie Caraway (SFD-7-2)
Superfund Division
U.S. Environmental Protection Agency, Region IX

1 75 Hawthorne Street
2 San Francisco, CA 94105

3 As to Settling Defendant:

4 Robert B. Kaplan, Esq.
5 Jeffer, Mangels, Butler & Marmaro LLP
6 One Sansome Street
7 San Francisco, CA 94104-4405

8 **XIV. RETENTION OF JURISDICTION**

9 28. This Court shall retain jurisdiction over this matter for the purpose of interpreting
10 and enforcing the terms of this Consent Decree.

11 **XV. INTEGRATION**

12 29. This Consent Decree constitutes the final, complete and exclusive Consent Decree
13 and understanding between the Parties with respect to the settlement embodied in this Consent
14 Decree. The Parties acknowledge that there are no representations, agreements or
15 understandings relating to the settlement other than those expressly contained in this Consent
16 Decree.

17 **XVI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

18 30. This Consent Decree shall be lodged with the Court for a period of not less than
19 30 days for public notice and comment. The United States reserves the right to withdraw or
20 withhold its consent if the comments regarding the Consent Decree disclose facts or
21 considerations which indicate that this Consent Decree is inappropriate, improper, or
22 inadequate. Settling Defendant consents to the entry of this Consent Decree without further
23 notice.

24 31. If for any reason this Court should decline to approve this Consent Decree in the
25 form presented, this Consent Decree is voidable at the sole discretion of any party and the
26 terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

27 **XVII. SIGNATORIES/SERVICE**

28 32. Each undersigned representative of Settling Defendant to this Consent Decree and
the Assistant Attorney General for the Environment and Natural Resources Division of the
United States Department of Justice certifies that he or she is authorized to enter into the terms

1 and conditions of this Consent Decree and to execute and bind legally such Party to this document.

2 33. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this
3 Court or to challenge any provision of this Consent Decree, unless the United States has notified
4 Settling Defendant in writing that it no longer supports entry of the Consent Decree.

5 34. Settling Defendant shall identify, on the attached signature page, the name and
6 address of an agent who is authorized to accept service of process on his behalf with respect to
7 all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to
8 accept service in that manner and to waive the formal service requirements set forth in Rule 4 of
9 the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but
10 not limited to, service of a summons.


11 **XVIII. FINAL JUDGMENT**


12 35. Upon approval and entry of this Consent Decree by the Court, this Consent Decree
13 shall constitute the final judgment between the United States and Settling Defendant. The Court
14 finds that there is no just reason for delay and therefore enters this judgment as a final judgment
15 under Fed. R. Civ. P. 54 and 58.

16
17 SO ORDERED THIS 12th DAY OF March, 2002

18
19 
20 United States District Judge

21 FOR THE UNITED STATES OF AMERICA

22
23  (by Att)
24 JOHN C. CRUDEN
25 Acting Assistant Attorney General
26 Environment and Natural Resources Division

27 
28 ANGELA O'CONNELL
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division

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for KEITH TAKATA

Superfund Division Director
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105



LETITIA D. MOORE
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region IX
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301 Howard St.
San Francisco, CA 94105

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U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

LETITIA D. MOORE
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of the United States of America v. Pernaco and Lawrence Sze, CV NO. 00-6199-DDDP(CTx), relating to the PEMACO Superfund Site.

FOR DEFENDANT

Date:

10/1/01

LAWRENCE SZE

CERTIFICATE OF SERVICE

I, Sharon Cipparrone, hereby certify and declare:

1. I am over the age of 18, and I am not a party to this case.
2. My business address is 301 Howard Street, Suite 1050, San Francisco, California 94105.
3. On January 2, 2002, I served a true copy of the foregoing, attached document(s) entitled:

CONSENT DECREE

by U.S. Postal Service to the following:

Robert Kaplan, Esquire
Jeffer, Mangels, Butler & Mamaro, LLP
One Sansome Street, 12 th Floor
San Francisco, CA 94104-4430

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 2, 2002, at San Francisco, California.

Sharon Cipparrone